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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/777,079

02/13/2004

James R. Crapser

J-3894

4128

28165 7590 02/03/2009
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EXAMINER

WILSON, GREGORY A

ART UNIT

PAPER NUMBER

3749

MAIL DATE

DELIVERY MODE

02/03/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/777,079	CRAPSER, JAMES R.	
	Examiner	Art Unit	
	Gregory A. Wilson	3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-12 and 15-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 22 and 23 is/are allowed.
- 6) ☒ Claim(s) 1-6,8-12 and 15-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-6, 8-11, 15-17 and 21 are rejected under 35 U.S.C. 102(a) as being anticipated by **McGee et al (WO 2004/082726)**. **McGee et al** discloses a device (SEE Figure 1) for providing liquid material to an atmosphere and includes a container (1) for holding a liquid having an opening, a porous wick (3) extending through the opening such that a portion of the wick contacts the liquid held within the container and a portion of the wick is exposed to the ambient environment, where the wick transfers the liquid from the container, capillary member (7) having at least one diffusion (Figure shows 2 members 7) surface in communication with a portion of the wick and are detachable therefrom (SEE page 6, lines 4-6), the capillary member can be made of any suitable non-porous substance, for example plastics, ceramics, glass, etc, (See page 3, lines 7-8), the capillary member having a nonporous capillary channel (9) (SEE Abstract and page 1, line 24) (the channels are V-shaped) having a surface in communication with a portion of the wick that extends outside the container and a surface which extends radially from the wick substantially continuous along the length thereof, the capillary

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member is a wing shaped capillary plate having one or more capillary channels and is capable of transferring liquid from the wick for dispersion to the ambient environment.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over **McGee et al (WO 2004/082726) in view of Zaragoza et al (6,565,012)**. **McGee et al** discloses the applicants primary inventive concept, as stated above, but does not specifically teach a cover or housing which encases a portion of the wick extending outside the container. **Zaragoza et al** teaches that it is very well known in the art to implement a cover (12) with vent openings (13) over a vapor diffusing device (15), furthermore Zaragoza et al teaches that the cover (11 & 12) allows for a vapor diffusing device to be detachable from the housing. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains to have modified the vapor diffusing device of McGee et al by adding a covering structure (11 & 12) as taught by Zaragoza et al for the purpose of providing protection to the vapor diffusing device or providing a decorative structure the applicant has not disclosed that having a housing/cover solves any stated problem in a new or

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unexpected way or is for any particular purpose which is unobvious to one of ordinary skill.

Allowable Subject Matter

Claims 22 and 23 are allowed.

Response to Arguments

Applicant's amendment to the specification is hereby acknowledged and the previous objection is hereby withdrawn. Applicant's arguments filed 11/13/08 have been fully considered but they are not persuasive. Applicant argues that McGee does not teach an evaporative device having a capillary member that is movable such that the nonporous capillary channel is removable from communication with the portion of the wick, furthermore the applicant states that McGee does not teach a plurality of capillary plates that are movable such that the capillary channels of each are removable from communication with the portion of the wick extending outside of the container nor a plurality of capillary plates are movable such that the capillary pathways of each are removable from communication with the portion of the wick extending outside of the container and wherein the plural capillary plates are actuatable in a direction away from the wick to separate the capillary pathways thereof from communication with the portion of the wick exposed to the ambient air. The examiner respectfully disagrees and directs applicants attention to pages 2, line 29 – page 3, line 9, wherein it is discussed that the diffusion surface is at least non-integral, non-porous sheet having a surface capillarity,

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the term "non-integral" is meant that the material of the sheet is not made in a single piece with the transfer member but is made separately and attached thereto. This attachment/detachment is regarded as a clear reading on the applicants newly amended claims wherein the capillary member is removable from its communication with the portion of the wick.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory A. Wilson whose telephone number is (571)272-4882. The examiner can normally be reached on 7 am - 4:30 pm EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve McAllister can be reached on (571) 272-6785. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gregory A. Wilson/
Primary Examiner, Art Unit 3749
January 30, 2009